IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 5TH SEPTEMBER 2007 / 14TH BHADRA 1929

WP(C).No. 18000 of 2005(P)

(O.S.NO.287/99 OF PRINCIPAL SUB COURT, KOTTAYAM)

PETITIONER:

DELTA PROJECTS, A PARTNERSHIP FIRM REGD. UNDER INDIAN PARTNERSHIP ACT AND HAVING ITS OFFICE AT 36/1114,VAIDYAR LANE,INDIRA NAGAR, KALOOR, COCHIN-17,REP.BY ITS MANAGING PARTNER, J.MOHAMMED SIRAJ, VAIDYAR LANE, INDIRA NAGAR, KALOOR, COCHIN-682 017.

BY ADV. SMT.ELIZABETH MATHAI IDICULLA
SRI.MOHAN IDICULLA ABRAHAM
SMT.RACHEL JOSEPH
SRI.MARTIN D.ALUMKARA
SMT.PUSHPY B.MURICKEN

RESPONDENTS:

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1. **MUSLIM EDUCATIONAL SOCIETY, REPRESENTED BY 2ND DEFENDANT PRESIDENT OF THE MANAGING COMMITTEE.**

2. **THE MANAGING COMMITTEE, MES COLLEGE PROPOSED, P.O.ERUMELI, KOTTAYAM DISTRICT, REPRESENTED BY THE PRESIDENT (ADDRESS OF SERVICE AS SHOWN ABOVE)**

BY ADV. SRI.RAJEEV V.KURUP for R1 & R2

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 05/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.NO.18000/2005 P

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE ORDER IN I.A.702/2005 IN O.S.287/99 OF THE PRINCIPAL SUB COURT, KOTTAYAM, DTD. 8/04/2005.**

EXT.P2: **COPY OF THE WRITTEN STATEMENT IN O.S.287/99 BEFORE THE PRINCIPAL SUB COURT, KOTTAYAM.**

EXT.P3: **COPY OF THE AMENDMENT APPLICATION I.A.702/2005 DTD. 10/04/2005 FILED BY THE RESPONDENTS IN THE ABOVE SUIT.**

EXT.P4: **COPY OF THE OBJECTION FILED BY THE PETITIONER AGAINST THE ABOVE I.A.**

/TRUE COPY/

P.A.TO JUDGE

KSS

PIUS C. KURIAKOSE,J.

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W.P.(C) No.18000 of 2005

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Dated: 5th September, 2007

JUDGMENT

Impugned in this Writ Petition under Article 227 of the Constitution filed by the plaintiff is Ext.P1 order by which the learned Subordinate Judge allowed an application filed by the respondents-defendants for amendment of counter claim.

2. I have heard the submissions of of Mr.Mohan Idiculla Abraham, learned counsel for the petitioner and those of Mr.Rajeev V.Kurup, learned counsel for the respondents.

3. Even though Mr.Mohan Idiculla Abraham addressed me very strenuously, I am not prepared to agree with his submission that the court below has traversed limits of powers under Order VI Rule 17. At the same time, I feel that it is necessary to ensure that legal prejudice is not caused to the petitioner by the amendment. It is clarified that Ext.P1 will operate only prospectively, i.e., from the date on which the amendment application was filed. I also find that the court below was not justified in allowing the application belated as it was, without imposing any conditions. Under these circumstances, in modification of Ext.P1, the Writ Petition will stand disposed of issuing the following directions:

Ext.P1 shall operate only with effect from the date of the amendment application. The petitioner will have the liberty of filing a written statement to the amended counter claim raising a plea that the counter claim raised on the whole or in part is barred by limitation. If such a statement is filed, an issue will be raised by the court below as to limitation and that issue will be decided along with other issues after evidence. It is also ordered that Ext.P1, even subject to the above modification, will become operative only if the respondents pay a sum of Rs.1500/- by way of cost to the petitioner either directly or through their counsel in this court within three weeks from today failing which Ext.P1 will stand set aside and the I.A. for amendment will stand dismissed.

srd **PIUS C.KURIAKOSE, JUDGE**